



California Fair Political Practices Commission

January 9, 1986

LeRoy W. Knutson
City Attorney
City of La Mesa
P.O. Box 937
La Mesa, CA 92041-0314

Re: Your Request for Advice
Our File No. A-85-256

Dear Mr. Knutson:

This is in response to your request for advice on behalf of Councilwoman Jerri Lopez of La Mesa. Your request is based on the following material facts.

FACTS

(1) Mrs. Lopez is married to Arthur Lopez, the Vice President-Manager of Whittaker Corporation. Mr. Lopez has an investment of more than \$1,000 in Whittaker Corporation.

(2) Whittaker Corporation is a "Fortune 500" corporation and is listed on the New York Stock Exchange.

(3) Whittaker Corporation owns land abutting a proposed redevelopment project. The Whittaker property, which is fully developed, has an assessed value of \$1,037,496 according to the San Diego Assessor's Office. The property contains a manufacturing plant and an office structure which account for approximately 70 percent of the assessed value of the property.

(4) The proposed redevelopment project area abuts a drainage channel, which requires substantial improvements to accommodate the flow of a 100-year flood. The establishment of the project area will assist in the funding of a proposed flood control project being undertaken by the City. The redevelopment project is not foreseen to require rezonings in this area. The present zoning on the property is CM (Commercial Manufacturing). It is anticipated at this time that the properties located adjacent to the Whittaker property

LeRoy W. Knutson
January 9, 1985
Page 2

will redevelop into professional offices or an industrial park, both permitted under the present zoning. The property directly north of the Whittaker property is presently unimproved and used as a brick and building material storage yard.

QUESTION

Mrs. Lopez wishes to know whether she must disqualify herself from participating in the decisions concerning the redevelopment project.

CONCLUSION

Mrs. Lopez must disqualify herself from participating in the decision to approve the redevelopment project if the foreseeable financial effect of the redevelopment project will result in an increase or decrease in the current fair market value of the Whittaker property by \$1,000,000 or more and such effect will be distinguishable from the effect on the public generally.

ANALYSIS

The Political Reform Act ("the Act")^{1/} prohibits public officials from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they have a financial interest. Section 87100.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

"Investment" as defined by Section 82034 includes any financial interest in or security issued by a business entity that is held by the official's immediate family. Consequently, Mr. Lopez's investment interest in Whittaker Corporation is imputed to Mrs. Lopez.

"Income" as defined by Section 82030 includes any community property interest in income of the spouse. Since half of Mr. Lopez's income is imputed to Mrs. Lopez, Whittaker Corporation is deemed as a source of income to Mrs. Lopez.

As can be seen, Mrs. Lopez has an economic interest in Whittaker Corporation due to Mr. Lopez's investment interest in the corporation (Section 87103(a)) and because of her community property interest in Mr. Lopez's income from the corporation (Section 87103(c)). Accordingly, Mrs. Lopez must disqualify herself from participating in any decision which could have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on Whittaker Corporation.

The foreseeable effects of redevelopment zones on nearby property was addressed in the Commission's Gillmor Opinion.^{2/}

^{2/} Opinion requested by Gary Gillmor, 3 FPFC Opinions 38 (No. 76-089, April 6, 1977).

In Gillmor the Commission concluded:

Redevelopment zones are created for the precise purpose of upgrading portions of a community and creating a positive financial impact on investments and property values in the zone.... Thus, it is intended and anticipated that redevelopment will have a financial impact on real property and businesses located in and near the redevelopment zone.

3 FPPC Opinions 38 at 41.

It is certainly foreseeable that the decision to pursue the redevelopment project will have a financial effect on the Whittaker property which is directly adjacent to the proposed redevelopment zone boundary. Next it must be determined whether that effect would be material.

Commission regulation 2 Cal. Adm. Code Section 18702.2, establishes monetary guidelines for determining the material effect of a decision on a business entity. Subsection (c) of that regulation states in pertinent part:

(c) The effect of a decision on any business entity listed on the New York Stock Exchange or the American Stock Exchange will be material if:

* * *

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in assets or liabilities must be \$1,000,000 or more.

2 Cal. Adm. Code Section
18702.2(c) (emphasis added).

Since Whittaker Corporation is traded on the New York Stock Exchange and is also a Fortune 500 corporation, the effect of a decision will be material if it increases or decreases the value of the Whittaker property by \$1,000,000 or more.^{3/}

^{3/} The effect of a decision will be measured by the effect upon the current fair market value of the property. See, Legan Opinion, 9 FPPC Opinions 1 (No. 85-001, August 20, 1985). This may differ from the property's assessed value.

LeRoy W. Knutson
January 9, 1985
Page 5

Because we have not been provided with any facts regarding the foreseeable financial effect of the redevelopment project on the Whittaker property we are unable to conclude whether that effect would be material or not.

If it is determined that the foreseeable financial effect on the Whittaker property would be material, then Mrs. Lopez would be required to disqualify herself from participating in the decision to approve the redevelopment project unless the effect of the decision on the Whittaker property would not be distinguishable from its effect on the public generally.

The "public generally" exception is applicable only when "the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public." 2 Cal. Adm. Code Section 18703.

In Legan, supra, the Commission concluded that:

In determining whether an effect upon an official's economic interest will be "substantially" the same as an effect upon a "significant segment" of the public, it must first be determined what group is affected "in substantially the same manner" as the official's economic interest. That group must be analyzed to determine if it is both large in number and heterogenous in quality as required in order for a group to constitute a "significant segment of the public."

9 FPPC Opinions 1 at 15.

Consequently, additional facts would be needed to determine whether or not the effect of the decision would be distinguishable from its effect on the public generally.

I hope that this advice gives you an adequate foundation from which to advise Mrs. Lopez. If we can be further assistance, please let us know.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh
cc: Jerri Lopez



F P P C
DEC 10 3 24 PM '85

CITY OF LA MESA

December 6, 1985

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Gentlemen:

I am enclosing a memorandum from David Wear, the Director of Planning for the City of La Mesa. Mrs. Jerri Lopez, Councilwoman of the City of La Mesa, is married to Arthur Lopez. Arthur Lopez is the Vice President-Manager of Whittaker Corporation, one of the "Fortune 500" corporations. The corporation has a manufacturing plant as well as an office structure on land abutting the proposed redevelopment project. Mrs. Lopez's husband has an investment of more than \$1,000 in Whittaker Corporation.

However, it does not appear that Mrs. Lopez's decisions on the City Council would "materially affect" Whittaker Corporation. I would respectfully request your opinion in this matter. If you need additional information, I would be happy to provide same.

Very truly yours,

LeRoy W. Knutson
City Attorney

LWK:no

cc: Ronald E. Bradley
Jerri Lopez

MEMORANDUM

TO: Lee Knutson

FROM: Dave Wear

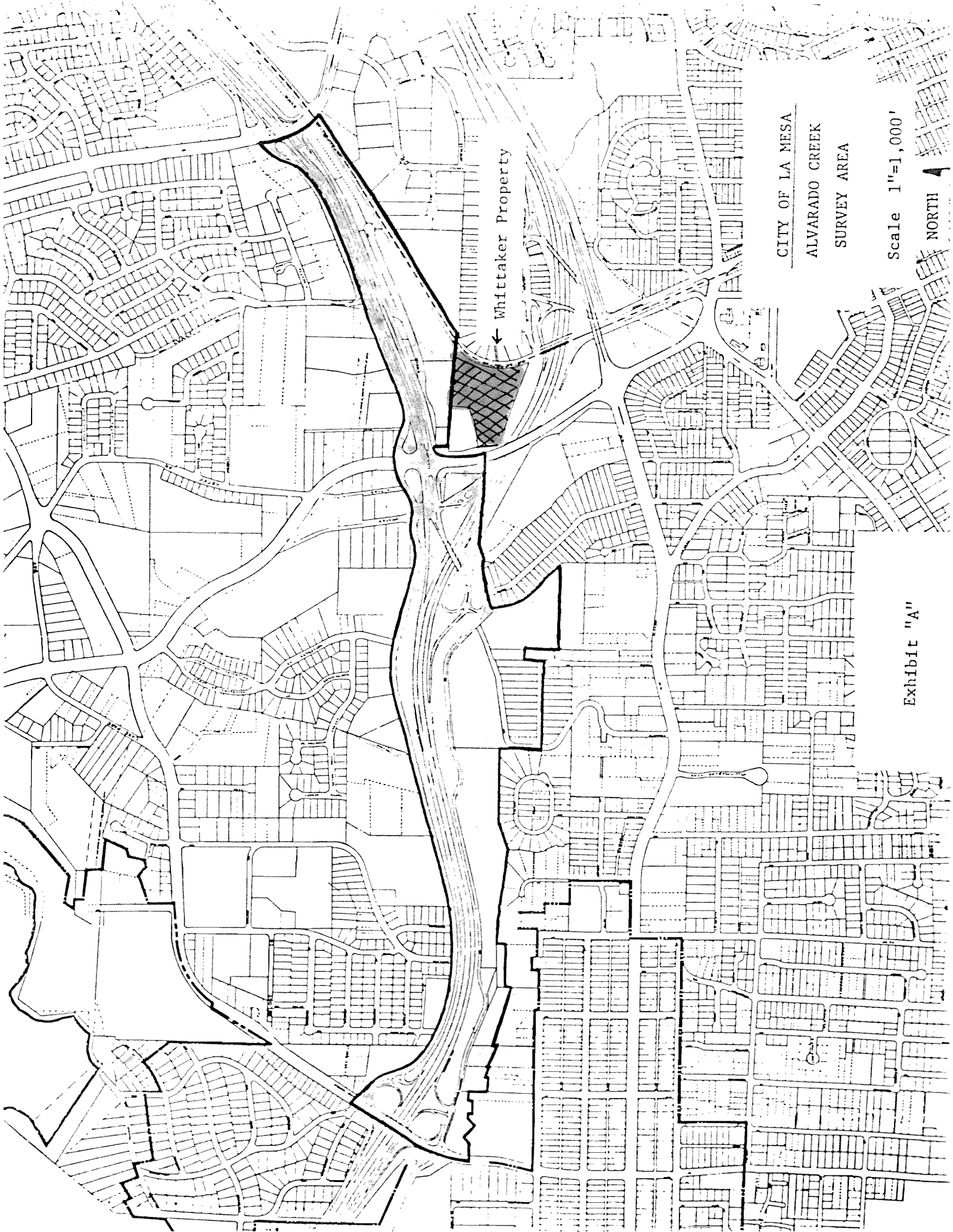
SUBJECT: Potential Benefit of Proposed Redevelopment on the
Whittaker Property

DATE: December 5, 1985

The proposed redevelopment survey area (see attached map) does not include the Whittaker property. If a redevelopment area is established, no direct benefits will accrue to the Whittaker property. It is possible that there will be some indirect benefit because property values in the survey area and areas adjacent to it (the property in question is adjacent to the project area) should rise as a result of public improvements to the redevelopment area.

DNW/mlh

Attachment: map



CITY OF LA MESA
ALVARADO CREEK
SURVEY AREA

Scale 1"=1,000'

NORTH 

Exhibit "A"



F P P C
JAN 3 10 41 AM '86

CITY OF LA MESA

December 31, 1985

Ms. Jeanette E. Turvill
Legal Assistant
Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

Re: Your File No. A-85-256

Dear Ms. Turvill:

I have been authorized by Councilmember Lopez to obtain the advice on her behalf in this matter. Her mailing address is:

Mrs. Jerri Lopez
4270 Cobalt
La Mesa, CA 92041

Enclosed is the additional information from our Planning Department that you requested.

Thank you very much for your cooperation.

Very truly yours,

LeRoy W. Knutson
City Attorney

LWK:no

Enclosure

CITY OF LA MESA
RECEIVED
DEC 20 12 27 AM '85
ANITA D. UNDERWOOD
CITY CLERK

F P H C

DATE: December 19, 1985 JAN 3 10 41 AM '86

TO: LeRoy Knutson, City Attorney

FROM: Brad Richter, Planning Department

SUBJECT: Response to letter from FPPC, dated December 16, 1985

#2

- a. The proposed redevelopment project area abutts a drainage channel which requires substantial improvements to accommodate the flow of a 100-year flood. The establishment of the project area will assist in the funding of a proposed flood control project being undertaken by the City. The redevelopment project is not foreseen to require rezonings in this area. The present zoning on the property is CM (Commercial Manufacturing). It is anticipated at this time that the properties located adjacent to the Whittaker property will redevelop into professional offices or an industrial park, both permitted under the present zoning. The property directly north of the Whittaker property is presently unimproved and used as a brick and building material storage yard.
- b. The Whittaker property is valued by the San Diego County Assessor's Office at \$1,037,496, \$706,197 of which is the value of the improvements. The property contains several industrial buildings and is fully developed.
- c. As the Whittaker property is outside the project area, it will not be directly affected by any possible rezonings that may result from the plan. Access from the site is not taken through the project area, and since the property is developed, is not likely to receive any direct effects from the project. Indirect effects are limited to a general upgrading of the surrounding area which the redevelopment plan wishes to achieve.

BSR:bp



California Fair Political Practices Commission

December 16, 1985

LeRoy W. Knutson, City Attorney
City of La Mesa
8130 Allison Avenue
La Mesa, CA 92041

Re: Your Request for Advice
Our File No. A-85-256

Dear Mr. Knutson:

We have received your December 6, 1985 letter requesting written advice concerning a possible conflict of interest within your city (letter enclosed).

We will be happy to provide written advice; however, in order to respond to your letter, we will need the additional information listed below. Regulation 2 Cal. Adm. Code Section 18329 (copy enclosed) requires that this information be provided before we can act on your request for advice.

- (1) Your statement that you have been authorized by councilmember Lopez to obtain this advice on her behalf and the home mailing address for Councilmember Lopez.
- (2) Additional information is needed regarding the effect the redevelopment project will have on the Whittaker property, such as:

- a. The type of redevelopment project and the intended use of the property within the project area;
- b. the character and approximate value of the Whittaker property; is it developed, vacant, minimally developed?
- c. the effect the decision will have on that character; will it be rezoned or change the permitted use, etc.

Please provide this information by January 13, 1986, so that we can respond to your letter in a timely manner. If you

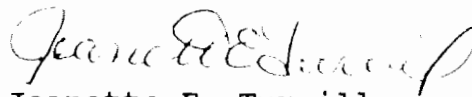
LeRoy W. Knutson, City Attorney
December 16, 1985
Page 2

cannot provide the information by that date, please contact this office. If we do not hear from you by January 13, 1986 we will have to assume that you have withdrawn your request for advice.

When we have received the additional information, your request for advice will be assigned to a member of our staff for review and response. Written advice is generally provided within 21 working days after all pertinent information has been received.

Please contact this office at (916) 322-5901 if you have any questions regarding this letter.

Sincerely,



Jeanette E. Turvill
Legal Assistant
Legal Division

JET:plh
Enclosure



California Fair Political Practices Commission

January 6, 1986

LeRoy W. Knutson, City Attorney
City of La Mesa
8130 Allison Avenue
La Mesa, CA 92041

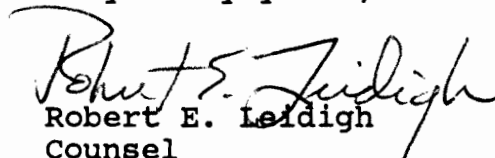
Re: Your Request for Advice
Our File No. A-85-256

Dear Mr. Knutson:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Mrs. Jerri Lopez